

ORIGINAL

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

MTS LOGISTICS, INC.

SUMMONS IN A CIVIL ACTION

V.

MODEL TILE & MARBLE INC.

CASE NUMBER:

08 CV 6792

TO: (Name and address of Defendant)

MODEL TILE & MARBLE INC.  
3557 Plover Avenue, Unit 3-4  
Naples, FL 34117

JUDGE SWAIN

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Mahoney & Keane, LLP.  
11 Hanover Square, Tenth Floor  
New York, NY 10005  
(212) 385-1422

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DATE

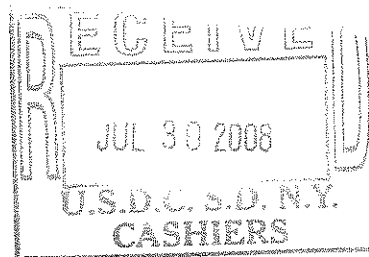
JUL 30 2008

(By) DEPUTY CLERK

Catherine Lapley

MAHONEY & KEANE, LLP  
Attorneys for Plaintiff  
MTS LOGISTICS INC.  
11 Hanover Square, Tenth Floor  
New York, NY 10005  
Tel (212) 385-1422  
File No. 12/3551/B/08/3

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



MTS LOGISTICS INC.,

Plaintiff(s),

-against-

MODEL TILE & MARBLE INC.,

Defendant(s).

08-cv- \_\_\_\_\_

COMPLAINT

PLEASE TAKE NOTICE that Plaintiff(s), MTS LOGISTICS INC. ("MTS"), by their attorneys, MAHONEY & KEANE, LLP, as and for a Complaint against Defendant(s), MODEL TILE & MARBLE INC. ("MODEL TILE"), allege, upon information and belief, as follows:

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is based upon 28 U.S.C. § 1333, as well as the Court's pendent, supplementary and ancillary jurisdiction.
2. Plaintiff MTS is a legal entity duly organized and existing pursuant to the laws of the United States.
3. Defendant MODEL TILE is a business entity organized and existing pursuant to the laws of the United States with offices and a place of business located at 3557 Plover Avenue, Unit 3-4, Naples, FL 34117.

4. The United States District Court for the Southern District of New York is the proper venue for this action, as Plaintiff maintains a principal place of business within the Southern District of New York.

5. Plaintiff sues on its own behalf and as agent and trustee on behalf of any other party who may now have or hereinafter acquire an interest in this action.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT

6. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "5" as if specifically set forth herein at length.

7. At all times relevant herein, Defendant MODEL TILE entered into agreements, service contracts, contracts of affreightment, charter agreements and/or bills of lading, with Plaintiff for, *inter alia*, the carriage, storage, handling, care and/or maintenance of Defendant's cargoes by Plaintiff in consideration for payments by Defendant to Plaintiff for said services.

8. Pursuant to the agreements between the parties Plaintiff is entitled to all costs incurred by Plaintiff in attempting to collect fees under the agreements, including reasonable attorneys' fees and interest.

9. Plaintiff duly performed all duties and obligations required to be performed by Plaintiff in connection with Defendant's goods.

10. Defendant wrongfully, willfully, negligently and/or fraudulently breached the terms of the subject agreement(s) by, *inter alia*, failing to pay freight, dead freight, demurrage, detention, port fees, tariffs and other associated costs.

11. As a result of Defendant's breach of the subject agreements and Plaintiff has incurred, and will continue to incur, costs and expenses for which Defendant is liable under the terms of the agreements and at law.

12. Plaintiff has placed Defendant on notice of its claim that Defendant has breached the subject agreements and violated Plaintiff's rights under the law.

13. Despite Plaintiff's repeated demands, Defendant has failed to pay the Plaintiff's damages due and owing under the agreements and at law.

14. By reason of the foregoing, Plaintiff has sustained damages in the amount of \$11,900.00, together with interest, costs, fees, and expenses.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT

15. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "14" as if specifically set forth herein at length.

16. Defendant has an account stated with the Plaintiff.

17. By reason of the foregoing, Plaintiff has sustained damages in the amount of \$11,900.00, together with interest, costs, fees, and expenses.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT

18. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "1" through "17" as if specifically set forth herein at length.

19. Plaintiff is due from Defendant the quantum meruit of Plaintiff's services.

WHEREFORE, Plaintiff prays:

(A). that judgment be entered in favor of Plaintiff for an amount exceeding **eleven thousand nine-hundred dollars** \$11,900.00, plus interest, fees, including attorneys' fees, costs, and disbursements;

(B). that Court process be issued against the Defendant; and

(C). that Plaintiff be granted such other and further relief as the Court may deem just and proper.

Dated: New York, New York

July 25, 2008

MAHONEY & KEANE, LLP  
Attorneys for Plaintiff  
MTS LOGISTICS INC.

By: 

Jorge A. Rodriguez  
11 Hanover Square, Tenth Floor  
New York, NY 10005  
Tel (212) 385-1422